

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

GIACOMETTO RANCH INC. a
Montana Corporation, TOM
GIACOMETTO, a resident of
Montana, and ROBERT
GIACOMETTO, a resident of South
Dakota,

Plaintiffs,

vs.

DENBURY ONSHORE LLC, a
Delaware Corporation, and
DENBURY OPERATING
COMPANY, a Delaware Corporation,

Defendants.

CV 16-145-BLG-SPW-KLD

ORDER

On September 12, 2022, Plaintiffs Giacometto Ranch Inc., Tom Giacometto, and Robert Giacometto (collectively “Giacometto”) and Defendants Denbury Onshore LLC and Denbury Operating Company (collectively “Denbury”), by and through counsel of record, appeared before the Court via Zoom for a discovery status conference. The purpose of this Order is to memorialize the deadlines and other matters discussed with the parties during the status conference:

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1. As to verification of discovery responses, the parties advised no agreement had been reached, but they believed resolution would not require further Court involvement. Accordingly, the Court considers this issue resolved.
2. As to the ArcGIS map, the parties had previously agreed they could resolve this issue without further Court involvement, but Giacometto requested a Court order compelling production of the ArcGIS map. This issue will be addressed by separate order.
3. As to redactions other than attorney/client privilege and attorney work product, Giacometto filed the Declaration of Derrick Braaten, attorney for Giacometto, with an attachment listing a number of documents, listed by beginning Bates number, which have not yet been produced unredacted. *See* Doc. 158. Denbury identified two documents, BEGDOC DO14666 and DO14674, that it believes contain updates on this litigation and are protected by attorney/client privilege. Giacometto responded that the privilege is arguably waived if the update was in a report disseminated to the entire corporation. The parties agreed to confer on this issue.

The parties also identified a number of documents (BEGDOC DO94409, DO94417, DO94425, DO94432, DO94439, and DO94446) which contain personal health information of Denbury employees. The parties agreed that Denbury would remove all personally identifiable information through redaction and produce the documents.

As to all remaining documents listed in Doc. 158-1, Denbury has agreed to produce unredacted to Giacometto. The Court has established **September 16, 2022** as the deadline for this production.

4. As to attachments to emails, Giacometto advised that it believes there are additional attachments that have not been produced, but conceded that it was not certain the attachments had not been produced in other productions. Denbury advised it believes there are 6 or 7 attachments that have been missed, and advised it will produce them in native format.

5. As to text messages, Denbury had previously agreed to produce text messages from the custodians and on the topics identified in Doc. 141-12, excluding topics and custodians related to the CO2 claims, which have been dismissed. At the conference, Denbury advised that some of the custodians used personal, rather than company-issued, phones for work related communications and stated it could not compel employees to turn over their phones. Denbury also advised that some of the employees had left employment and it was unsure if their phone contents had been preserved.

There was also discussion about whether the phone contents had been “mirrored” by Denbury’s IT department and, if so, when. Denbury agreed to further investigate and communicate with Giacomettos about the status of text messages responsive to the topics and custodians identified in Doc. 141-12, by **September 16, 2022**.

6. As to attorney/client privilege and attorney work product redactions, the Court reviewed Doc. 157, Denbury’s *in camera* submission, for exceptions to redactions and withholdings based on attorney/client privilege and attorney work product. Based on the Court’s review, Denbury is required to produce the specific excerpts from the following documents by **September 16, 2022**:

1. DO16967 (April 14, 2016 email from Ben Jones, MT Board of Oil and Gas to Tommy Yates);
2. DO83626-DO83627 (April 8, 2020 email from JJ England to Jon Dyre, et al);
3. DO92854-DO92856 (April 27, 2020 email from Jon Dyre to Derrick Braaten, et al, and April 27, 2020 response from JJ England);
4. DO94405 (Outlook meeting information March 18, 2020).

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IT IS SO ORDERED.

DATED this 14th day of September, 2022.



Kathleen L. DeSoto
United States Magistrate Judge